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TOM FISHER

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Attorneys for Defendants
CARL KARCHER ENTERPRISES, INC.,
dba CARL'S JR. RESTAURANT; MAC5
PROPERTIES, LLC; FOODS NORTH LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TOM FISHER, CASE NO. CIV-S 04-2059 MCE DAD
Plaintiff, Civil Rights

v.

CONSENT DECREE AND ORDER

CARL KARCHER ENTERPRISES,
INC. dba CARL'S JR.
RESTAURANT; MAC5 PROPERTIES,
LLC; FOODS NORTH LLC; and
DOES 1 through 25,
Inclusive,

Defendants.

/

CONSENT DECREE AND ORDER

1. Plaintiff TOM FISHER filed a Complaint on September 30, 2004 and a First Amended Complaint in this action on December 16, 2004, to enforce provisions of the Americans with

1 Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq.,
2 and California civil rights laws against Defendants, CARL
3 KARCHER ENTERPRISES, INC. dba CARL'S JR. RESTAURANT; MAC5
4 PROPERTIES, LLC; FOODS NORTH LLC; and DOES 1 through 25,
5 Inclusive. Plaintiff has alleged that Defendants CARL KARCHER
6 ENTERPRISES, INC. dba CARL'S JR. RESTAURANT; MAC5 PROPERTIES,
7 LLC; and FOODS NORTH LLC violated Title III of the ADA and
8 sections 51, 52, 54.1, and 55 of the California Civil Code, and
9 sections 19955 et seq., of the California Health and Safety
10 Code by failing to provide full and equal access to their
11 facilities at the Carl's Jr. restaurant located at 2516
12 Esplanade, Chico, California when plaintiff visited the subject
13 facility on October 2, 2003.

14 2. Defendants CARL KARCHER ENTERPRISES, INC. dba CARL'S
15 JR. RESTAURANT; MAC5 PROPERTIES, LLC; FOODS NORTH LLC;
16 ("Defendants") deny the allegations in the Complaint and by
17 entering into this Consent Decree and Order do not admit
18 liability to any of the allegations in Plaintiff's Complaint
19 filed in this action. The parties hereby enter into this
20 Consent Decree and Order for the purpose of resolving this
21 lawsuit without the need for protracted litigation, and without
22 the admission of any liability.

23
24 **JURISDICTION:**

25 3. The parties to this consent decree agree that the
26 Court has jurisdiction of this matter pursuant to 28 USC §1331
27 for violations of the Americans with Disabilities Act of 1990,
28 42 USC 12101 et seq. and pursuant to pendant jurisdiction for

1 violations of California Health & Safety Code §19955 *et seq.*,
2 including §19959; Title 24 California Code of Regulations; and
3 California Civil Code §§51; 52; 54; 54.1; §54.3; and 55.

4 4. In order to avoid the costs, expense, and uncertainty
5 of protracted litigation, the parties to this consent decree
6 agree to entry of this Order to resolve all claims regarding
7 injunctive relief raised in the First Amended Complaint filed
8 with this Court on December 16, 2004. Accordingly, they agree
9 to the entry of this Order without trial or further
10 adjudication of any issues of fact or law concerning
11 plaintiff's claims for injunctive relief.

12 WHEREFORE, the parties to this consent decree hereby
13 agree and stipulate to the Court's entry of this Consent Decree
14 and Order, which provides as follows:

15
16 **SETTLEMENT OF INJUNCTIVE RELIEF:**

17 5. This Order shall be a full, complete, and final
18 disposition and settlement of Plaintiff's claims against
19 Defendants for injunctive relief that have arisen out of the
20 subject Complaint. The parties agree that there has been no
21 admission or finding of liability or violation of the ADA
22 and/or California civil rights laws, and this Consent Decree
23 and Order should not be construed as such.

24 6. The parties agree and stipulate that the corrective
25 work will be performed in compliance with the standards and
26 specifications for disabled access as set forth in the
27 California Code of Regulations, Title 24-2 and Americans with
28 Disabilities Act Accessibility Guidelines, unless other

standards are specifically agreed to in this Consent and Order:

a) Remedial Measures: The injunctive relief agreed upon by the Parties is attached as **Attachment A & B** to this Consent Decree, which is incorporated herein by reference as if fully set forth in this document. Defendants agree to undertake all remedial work set forth in **Attachment A & B**.

b) Timing of Injunctive Relief: Defendants will submit plans for all corrective work within 30 days of entry of this consent decree and order by the court, will commence work within 30 days of receiving approval from the building department, and will complete work within 60 days of commencement. In the event that unforeseen difficulties prevent defendants from completing any of the agreed-upon injunctive relief, defendants or their counsel will notify plaintiff's counsel in writing within 30 days of discovering the delay. Defendants or their counsel will notify plaintiff's counsel when the corrective work is completed, and in any case will provide a status report no later than 120 days from the entry of this consent decree.

DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES, AND COSTS:

7. The parties have not reached an agreement regarding plaintiff's claims for damages, attorney fees, litigation expenses and costs. These issues shall be the subject of further negotiation, a settlement conference with Magistrate Judge Dale Drozd set for June 16, 2005, further litigation, or of motions to the Court.

ENTIRE CONSENT ORDER:

8. This Consent Order and Attachment A & B to this Consent Decree, which is incorporated herein by reference as if fully set forth in this document, constitutes the entire agreement between the parties on the matters of injunctive relief, and no other statement, promise, or agreement, either written or oral, made by any of the parties or agents of any of the parties, that is not contained in this written Consent Order, shall be enforceable regarding the matters of injunctive relief described herein. This consent decree applies to plaintiff's claims for injunctive relief only and does not resolve plaintiff's claims for monetary damages, attorney's fees, litigation expenses and costs, which shall be the subject of further negotiation and/or litigation.

CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:

9. This Consent Order shall be binding on Plaintiff TOM FISHER, Defendants, CARL KARCHER ENTERPRISES, INC. dba CARL'S JR. RESTAURANT; MAC5 PROPERTIES, LLC; FOODS NORTH LLC; and any successors in interest. The parties have a duty to so notify all such successors in interest of the existence and terms of this Consent Order during the period of the Court's jurisdiction of this consent decree.

MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS TO
INJUNCTIVE RELIEF ONLY:

10. Each of the parties to this Consent Decree understands and agrees that there is a risk and possibility

that, subsequent to the execution of this Consent Decree, any or all of them will incur, suffer, or experience some further loss or damage with respect to the Lawsuit which are unknown or unanticipated at the time this Consent Decree is signed.

Except for all obligations required in this Consent Decree, the parties intend that this Consent Decree apply to all such further loss with respect to the Lawsuit, except those caused by the parties subsequent to the execution of this Consent Decree. Therefore, except for all obligations required in this Consent Decree, this Consent Decree shall apply to and cover any and all claims, demands, actions and causes of action by the parties to this Consent Decree with respect to the Lawsuit, whether the same are known, unknown or hereafter discovered or ascertained, and the provisions of Section 1542 of the California Civil Code are hereby expressly waived. Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

This waiver applies to the injunctive relief aspects of this action only and does not include resolution of plaintiff's claims for damages, attorney fees, litigation expenses and costs.

11. Except for all obligations required in this Consent Decree, and exclusive of the referenced continuing claims for damages, statutory attorney fees, litigation expenses and

1 costs, each of the parties to this Consent Decree, on behalf of
2 each, their respective agents, representatives, predecessors,
3 successors, heirs, partners and assigns, releases and forever
4 discharges each other Party and all officers, directors,
5 shareholders, subsidiaries, joint venturers, stockholders,
6 partners, parent companies, employees, agents, attorneys,
7 insurance carriers, heirs, predecessors, and representatives of
8 each other Party, from all claims, demands, actions, and causes
9 of action of whatever kind or nature, presently known or
10 unknown, arising out of or in any way connected with the
11 Lawsuit.

12
13 **TERM OF THE CONSENT ORDER:**

14 12. This Consent Order shall be in full force and effect
15 for a period of twelve (12) months after the date of entry of
16 this Consent Order, or until the injunctive relief contemplated
17 by this Order is completed, whichever occurs later. Magistrate
18 Judge Dale Drozd shall retain jurisdiction of this action to
19 enforce provisions of this Order for twelve (12) months after
20 the date of this Consent Decree, or until the injunctive relief
21 contemplated by this Order is completed, whichever occurs
22 later.

23
24 **SEVERABILITY:**

25 13. If any term of this Consent Decree and Order is
26 determined by any court to be unenforceable, the other terms of
27 this Consent Decree and Order shall nonetheless remain in full
28 force and effect.

SIGNATORIES BIND PARTIES:

13. Signatories on the behalf of the parties represent that they are authorized to bind the parties to this Consent Decree and Order.

Dated: June 16, 2005

/s/

Plaintiff TOM FISHER
(Original signature retained by
the Law Offices of Paul Rein)

Dated: June 16, 2005

/s/ Robert A. Wilson, Senior Vice

President
Defendant CARL KARCHER
ENTERPRISES, INC. dba CARL'S JR.
RESTAURANT
(Original signature retained by
the Law Office of Paul Rein)

Dated: June 16, 2005

/s/ Mike Mills

Defendant FOODS NORTH LLC
(Original signature retained by
the Law Office of Paul Rein)

APPROVED AS TO FORM:

Dated: June 16, 2005

PAUL L. REIN
PATRICIA BARBOSA
JULIE MCLEAN
LAW OFFICES OF PAUL L. REIN

/s/ Julie McLean

Attorneys for Plaintiff
TOM FISHER

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///

1 Dated: June 16, 2005


JAMES W. PINCIN
NISSON, PINCIN, et al.

2
3
4 /s/ James W. Pincin
Attorneys for Defendants
CARL KARCHER ENTERPRISES, INC.,
5 dba CARL'S JR. RESTAURANT; MAC5
PROPERTIES, LLC
6 (Original signature retained by
the Law Office of Paul Rein)
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9 **ORDER**

10 Pursuant to stipulation, and for good cause shown, **IT IS SO**
11 **ORDERED.**
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13 Dated: June 23, 2005

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15 MORRISON C. ENGLAND, JR.
16 UNITED STATES DISTRICT JUDGE
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